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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 AMORETTE JONES; CONSTANCE V.
10 JONES; SHANE JONES as an individual and
11 guardian ad litem to HUNTER JONES and
12 COLTEN MAX JONES; and PIRIE
13 GROSSMAN as an individual and guardian
14 ad litem to JEREMY ROBERT GROSSMAN
15 and ISABELLA MARIE GROSSMAN,

16 Plaintiff,

17 vs.

18 MARTIN GANZ; and DOES 1-25,

19 Defendant.

CASE NO. 11-cv-2331 - IEG (WVG)

**ORDER DENYING MOTION FOR
DEFAULT JUDGMENT
WITHOUT PREJUDICE**

[Doc. No. 9]

20 Presently before the Court is Plaintiffs Amorette Jones, Constance V. Jones, Shane Jones
21 as an individual and guardian ad litem to Hunter Jones and Colten Max Jones, and Pirie Grossman
22 as an individual and guardian ad litem to Jeremy Robert Grossman and Isabella Marie Grossman
23 (“Plaintiffs”)’s motion for default judgment against Defendant Martin Ganz (“Defendant”). [Doc.
24 No. 9.] For the reasons stated below, the Court **DENIES WITHOUT PREJUDICE** Plaintiffs’
25 motion.

BACKGROUND

26 The following allegations are taken from the complaint. In or about 2008, decedent Max
27 Jones purchased life insurance policies totaling \$65,000,000. [Doc. No. 1, Compl. ¶ 15] These
28 policies were to pay through to Plaintiffs upon Mr. Jones death via three separate trusts, with the

On October 7, 2011, Plaintiffs filed the present action against Defendant alleging causes of action for: (1) breach of written contract; (2) breach of oral agreement; (3) fraud; (4) restitution; and (5) conversion. [Compl.] When Defendant failed to respond to the complaint, and after the Clerk of Court entered default, Plaintiffs filed the present motion for default judgment seeking \$20,125,000 plus interest. [Doc. Nos. 8-9.]

A. Legal Standard for a Default Judgment

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

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1 1987). If plaintiff is seeking money damages, the plaintiff “is required to provide evidence of its
 2 damages, and the damages sought must not be different in kind or amount from those set forth in
 3 the complaint.” Amini Innovation Corp. v. KTY Int’l Mktg., 768 F. Supp. 2d 1049, 1053-54 (C.D.
 4 Cal. 2011).

5 **B. Analysis**

6 Plaintiffs’ motion contains no legal analysis or any discussion of the *Eitel* factors showing
 7 that Plaintiffs are entitled to default judgment. Plaintiffs’ motion is also not supported by a
 8 separate memorandum of point and authorities as required by Local Civil Rule 7.1(f)(1).¹

9 In addition, Plaintiffs seek a judgment against Defendant in the sum of \$20,125,000 plus
 10 pre-judgment interest at the rate of ten percent per annum. [Doc. No. 9 at 2; Doc. No. 9-1,
 11 Declaration of James T. Ryan (“Ryan Decl.”) ¶ 12.] In support of this damages claim, Plaintiffs
 12 only provide the Court with a purported agreement between Defendant and a “Brendan Dawson,”²
 13 which states:

14 The family will get 22 and 1 half percent of the net proceeds from the life insurance
 15 policies issued by Principle Financial Group and Trans America on the Life of Max
 jones, and 50 percent of net proceeds on the Lincoln Financial policy.

16 [Id. Ex. C.] This is at most evidence showing the percentages of the net proceeds from the policies
 17 to which Plaintiffs were entitled. However, Plaintiffs have not presented any evidence showing
 18 the net proceeds of those policies. Therefore, Plaintiffs have failed to provide the required
 19 evidence to support of their claim for monetary damages of \$20,125,000. See Amini Innovation,
 20 768 F. Supp. 2d at 1053-54. Plaintiffs also provide no legal authority for their contention that they
 21 are entitled to pre-judgment interest at a rate of ten percent.

22 In sum, because Plaintiffs have failed to provide any legal support for their motion or
 23 sufficient evidence in support of their claim for monetary damages, the Court **DENIES**

25 ¹ Local Civil Rule 7.1(f)(1) provides: “Each motion or other request for ruling by the court
 26 must be accompanied by a separate motion and notice of motion and another separate document
 captioned ‘Memorandum of Points and Authorities in support of [the motion].’”

27 ² The Court notes that this exhibit contradicts the allegations in the complaint that state that
 28 the agreement was between Defendant and Plaintiff’s attorney, Mr. Brendan Ozanne. [Compl. ¶¶ 11,
 18-24.]


1 **WITHOUT PREJUDICE** Plaintiffs' motion for default judgment.

2 **CONCLUSION**

3 For the reasons stated above, the Court **DENIES WITHOUT PREJUDICE** Plaintiffs'
4 motion for default judgment. In addition, the Court notes that Plaintiffs' motion was filed without
5 first obtaining a hearing date for the motion from chambers. The Court directs Plaintiffs to obtain
6 a hearing date from chambers prior to the filing of any future motions in accordance with Local
7 Civil Rule 7.1(b).

8 **IT IS SO ORDERED.**

9 **DATED:** January 9, 2012


10 **IRMA E. GONZALEZ, Chief Judge**
11 **United States District Court**